

SECOND REGULAR SESSION  
SENATE COMMITTEE SUBSTITUTE FOR  
HOUSE COMMITTEE SUBSTITUTE FOR  
**HOUSE BILL NO. 1837**  
**93RD GENERAL ASSEMBLY**

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Reported from the Committee on Small Business, Insurance and Industrial Relations, May 4, 2006, with recommendation that the Senate Committee Substitute do pass.

5239S.07C

TERRY L. SPIELER, Secretary.

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**AN ACT**

To repeal sections 383.010, 383.035, 383.105, and 383.110, RSMo, and to enact in lieu thereof thirteen new sections relating to malpractice insurance.

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*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Sections 383.010, 383.035, 383.105, and 383.110, RSMo, are  
2 repealed and thirteen new sections enacted in lieu thereof, to be known as  
3 sections 383.010, 383.016, 383.035, 383.105, 383.106, 383.107, 383.108, 383.124,  
4 383.196, 383.197, 383.198, 383.199, and 383.450, to read as follows:

383.010. 1. Notwithstanding any direct or implied prohibitions in chapter  
2 375, 377, or 379, RSMo, any three or more persons, residents of this state, being  
3 licensed under the provisions of chapter 330, 331, 332, 334, 335, 336, 338 or 339,  
4 RSMo, or under rule 8 of the supreme court of Missouri or architects licensed  
5 pursuant to chapter 327, RSMo, may, as provided in sections 383.010 to 383.040,  
6 form a business entity for the purpose of providing malpractice insurance or  
7 indemnification for such persons upon the assessment plan, and upon compliance  
8 with section 379.260, RSMo, liability and automobile insurance as defined in  
9 subdivisions (1) and (3) of section 379.230, RSMo, may be provided upon the  
10 assessment plan to those persons licensed pursuant to chapter 197, RSMo, and  
11 for whom medical malpractice insurance is provided under this section, except  
12 that automobile insurance shall be provided only for ambulances as defined in  
13 section 190.100, RSMo. [Hospitals, public or private, whether incorporated or  
14 not, as defined in chapter 197, RSMo, if licensed by the state of Missouri,] **Any**  
15 **entity licensed under chapter 197, RSMo,** professional corporations [formed

**EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.**

16 under the provisions of chapter 356, RSMo, for the practice of law and  
17 corporations, copartnerships or associations licensed under the provisions of  
18 chapter 339, RSMo], **and limited liability companies, corporations, limited**  
19 **liability partnerships, partnerships, and other similar entities formed**  
20 **for the practice of law or medicine** may also become members of any such  
21 entity. The term "persons" as used in sections 383.010 to 383.040 includes such  
22 hospitals, professional corporations and real estate business entities.

23         2. Anything in this section to the contrary notwithstanding, any persons  
24 duly licensed under the provisions of the laws of any other state who, if licensed  
25 under any similar provisions of the laws of this state, would be eligible to become  
26 members and insureds of an entity created under the authority of this section,  
27 may become members and insureds of such an entity, irrespective of whether such  
28 persons are residents of this state; provided, however, that any such persons must  
29 be employed by, or be a partner, shareholder or member of, a professional  
30 corporation, corporation, copartnership or association insured by or to be insured  
31 by such an entity.

32         3. Notwithstanding any provision of law which might be construed to the  
33 contrary, sections 379.882 and 379.888, RSMo, defining "commercial casualty  
34 insurance", shall not include professional malpractice insurance policies issued  
35 by any insurer in this state.

**383.016. The articles of association and the bylaws of any**  
2 **association created under the provisions of sections 383.010 to 383.040**  
3 **shall:**

4         **(1) Specify and define the types of assessments, including but not**  
5 **limited to initial, regular, operating, special, any other assessment to**  
6 **cover losses and expenses incurred in the operation of the association,**  
7 **or any other assessment to maintain or restore the association's assets,**  
8 **solvency, or surplus;**

9         **(2) Specify by type of assessment the assessments that shall**  
10 **apply to members, former members, or both members and former**  
11 **members of the association; and**

12         **(3) With respect to any assessment to cover losses and expenses**  
13 **incurred in the operation of the association and any assessment to**  
14 **maintain or restore the association's assets, solvency, or surplus**  
15 **specify:**

16         **(a) The exact method and criteria by which the amounts of each**

17 **type of assessment are to be determined;**

18 **(b) The time in which the assessments must be paid;**

19 **(c) That such assessments shall be made without limitation as to**  
20 **frequency;**

21 **(d) The maximum amount of any single assessment;**

22 **(e) That such assessments shall apply to members and former**  
23 **members; and**

24 **(f) That as to former members such assessments may be tiered**  
25 **with decreasing assessments for a period of time of up to six years.**

383.035. 1. Any association licensed pursuant to the provisions of sections  
2 383.010 to 383.040 shall be subject to the provisions of the following provisions  
3 of the revised statutes of Missouri:

4 (1) Sections 374.010, 374.040, 374.046 **to 374.049**, 374.110, 374.115,  
5 374.122, 374.170, **374.190**, 374.210, 374.215, 374.216, 374.230, 374.240, 374.250  
6 and 374.280, RSMo, relating to the general authority of the director of the  
7 department of insurance;

8 (2) Sections 375.022, 375.031, 375.033, 375.035, 375.037 and 375.039,  
9 RSMo, relating to dealings with licensed agents and brokers;

10 (3) Sections 375.041 and 379.105, RSMo, relating to annual statements;

11 (4) Section 375.163, RSMo, relating to the competence of managing  
12 officers;

13 (5) Section 375.246, RSMo, relating to reinsurance requirements, except  
14 that no association shall be required to maintain reinsurance, and for insurance  
15 issued to members who joined the association on or before January 1, 1993, an  
16 association shall be allowed credit, as an asset or as a deduction from liability,  
17 for reinsurance which is payable to the ceding association's insured by the  
18 assuming insurer on the basis of the liability of the ceding association under  
19 contracts reinsured without diminution because of the insolvency of the ceding  
20 association;

21 (6) Section 375.390, RSMo, relating to the use of funds by officers for  
22 private gain;

23 (7) Section 375.445, RSMo, relating to insurers operating fraudulently;

24 (8) Section 379.080, RSMo, relating to permissible investments, except  
25 that limitations in such section shall apply only to assets equal to such positive  
26 surplus as is actually maintained by the association;

27 (9) Section 379.102, RSMo, relating to the maintenance of unearned

28 premium and loss reserves as liabilities, except that any such loss reserves may  
29 be discounted in accordance with reasonable actuarial assumptions;

30 **(10) Sections 383.100 to 383.125 relating to reports from medical**  
31 **malpractice insurers;**

32 **(11) Sections 383.196 to 383.199 and 383.450 relating to**  
33 **notification, data reporting, and rating requirements.**

34 2. [Any association which was licensed pursuant to the provisions of  
35 sections 383.010 to 383.040 on or before January 1, 1992, shall be allowed until  
36 December 31, 1995, to comply with the provisions of this section as they relate to  
37 investments, reserves and reinsurance.

38 3.] Any association licensed pursuant to the provisions of sections 383.010  
39 to 383.040 shall file with its annual statement a certification by a fellow or an  
40 associate of the Casualty Actuarial Society. Such certification shall conform to  
41 the National Association of Insurance Commissioners annual statement  
42 instructions unless otherwise provided by the director [of the department of  
43 insurance].

44 [4.] 3. The director [of the department of insurance] shall have authority  
45 in accordance with section 374.045, RSMo, to make all reasonable rules and  
46 regulations to accomplish the purpose of sections 383.010 to 383.040, including  
47 the extent to which insurance provided by an association may be extended to  
48 provide payment to a covered person resulting from a specific illness possessed  
49 by such covered person; except that no rule or regulation may place limitations  
50 or restrictions on the amount of premium an association may write or on the  
51 amount of insurance or limit of liability an association may provide.

52 [5.] 4. Other than as provided in this section, no other insurance law of  
53 the state of Missouri shall apply to an association licensed pursuant to the  
54 provisions of this chapter, unless such law shall expressly state it is applicable  
55 to such associations.

56 [6.] 5. If, [after August 28, 1992, and] after its second full calendar year  
57 of operation, any association licensed under the provisions of sections 383.010 to  
58 383.040 shall file an annual statement which shows a surplus as regards  
59 policyholders of less than zero dollars, or if the director [of the department of  
60 insurance] has other conclusive and credible evidence more recent than the last  
61 annual statement indicating the surplus as regards policyholders of an  
62 association is less than zero dollars, the director [of the department of insurance]  
63 may order such association to submit, within ninety days following such order,

64 a voluntary plan under which the association will restore its surplus as regards  
65 policyholders to at least zero dollars. The director [of the department of  
66 insurance] may monitor the performance of the association's plan and may order  
67 modifications thereto, including assessments or rate or premium increases, if the  
68 association fails to meet any targets proposed in such plan for three consecutive  
69 quarters.

70 [7.] 6. If the director [of the department of insurance] issues an order in  
71 accordance with subsection [6] 5 of this section, the association may, in  
72 accordance with chapter 536, RSMo, file a petition for review of such order. Any  
73 association subject to an order issued in accordance with subsection [6] 5 of this  
74 section shall be allowed a period of three years, or such longer period as the  
75 director may allow, to accomplish its plan to restore its surplus as regards  
76 policyholders to at least zero dollars. If at the end of the authorized period of  
77 time the association has failed to restore its surplus to at least zero dollars, or if  
78 the director [of the department of insurance] has ordered modifications of the  
79 voluntary plan and the association's surplus has failed to increase within three  
80 consecutive quarters after such modification, the director [of the department of  
81 insurance] may allow an additional time for the implementation of the voluntary  
82 plan or may exercise [his] ~~the director's~~ powers to take charge of the  
83 association as [he] ~~the director~~ would a mutual casualty company pursuant to  
84 sections 375.1150 to 375.1246, RSMo. Sections 375.1150 to 375.1246, RSMo, shall  
85 apply to associations licensed pursuant to sections 383.010 to 383.040 only after  
86 the conditions set forth in this section are met. When the surplus as regards  
87 policyholders of an association subject to subsection [6] 5 of this section has been  
88 restored to at least zero dollars, the authority and jurisdiction of the director [of  
89 the department of insurance] under subsections 5 and 6 [and 7] of this section  
90 shall terminate, but this subsection may again thereafter apply to such  
91 association if the conditions set forth in subsection [6] 5 of this section for its  
92 application are again satisfied.

93 [8.] 7. Any association licensed pursuant to the provisions of sections  
94 383.010 to 383.040 shall place on file with the director [of the department of  
95 insurance], except as to excess liability risks which by general custom are not  
96 written according to manual rates or rating plans, a copy of every manual of  
97 classifications, rules, underwriting rules and rates, every rating plan and every  
98 modification of the foregoing which it uses. Filing with the director [of the  
99 department of insurance] within ten days after such manuals, rating plans or

100 modifications thereof are effective shall be sufficient compliance with this  
101 subsection. Any rates, rating plans, rules, classifications or systems in effect or  
102 in use by an association on August 28, 1992, may continue to be used by the  
103 association. Upon written application of a member of an association, stating his  
104 **or her** reasons therefor, filed with the association, a rate in excess of that  
105 provided by a filing otherwise applicable may be used by the association for that  
106 member.

383.105. 1. Every insurer providing medical malpractice insurance to a  
2 Missouri health care provider and every health care provider who maintains  
3 professional liability coverage through a plan of self-insurance shall submit to the  
4 director [of the department of insurance] a report of all claims, both open claims  
5 filed during the reporting period and closed claims filed during the reporting  
6 period, for medical malpractice made against any of its Missouri insureds during  
7 the preceding three-month period.

8 2. The report shall be in writing and contain the following information:

9 (1) Name and address of the insured and the person working for the  
10 insured who rendered the service which gave rise to the claim, if the two are  
11 different;

12 (2) Specialty coverage of the insured;

13 (3) Insured's policy number;

14 (4) Nature and substance of the claim;

15 (5) Date and place in which the claim arose;

16 (6) Name, address and age of the claimant or plaintiff;

17 (7) Within six months after final disposition of the claim, the amounts  
18 paid, if any, and the date and manner of disposition (judgment, settlement or  
19 otherwise);

20 (8) Expenses incurred; and

21 (9) Such additional information as the director may require.

22 3. As used in [this section], "insurer" includes every insurance company  
23 authorized to transact insurance business in this state, every unauthorized  
24 insurance company transacting business pursuant to chapter 384, RSMo, every  
25 risk retention group, every insurance company issuing insurance to or through  
26 a purchasing group, **every entity operating under this chapter**, and any  
27 other person providing insurance coverage in this state[. With respect to any  
28 insurer transacting business pursuant to chapter 384, RSMo, filing the report  
29 required by this section shall be the obligation of the surplus lines broker or

30 licensee originating or accepting the insurance], including self-insured health  
31 care providers.

383.106. 1. To effectively monitor the insurance marketplace,  
2 rates, financial solvency, and affordability and availability of medical  
3 malpractice coverage, the director shall establish by rule or order  
4 reporting standards for insurers by which the insurers, or an advisory  
5 organization designated by the director, shall annually report such  
6 Missouri medical malpractice insurance premium, loss, exposure, and  
7 other information as the director may require.

8 2. The director shall, prior to May 30, 2007, establish risk  
9 reporting categories for medical malpractice insurance, as defined in  
10 section 383.150, and shall establish regulations for the reporting of all  
11 base rates and premiums charged in those categories as determined by  
12 the director. The director shall consider the history of prior court  
13 judgments for claims under this chapter in each county of the state in  
14 establishing the risk reporting categories.

15 3. The director shall collect the information required in this  
16 section and compile it in a manner appropriate for assisting Missouri  
17 medical malpractice insurers in developing their future base rates,  
18 schedule rating, or individual risk rating factors and other aspects of  
19 their rating plans. In compiling the information and making it  
20 available to Missouri insurers and the public, the director shall remove  
21 any individualized information that identifies a particular insurer as  
22 the source of the information. The director may combine such  
23 information with similar information obtained through insurer  
24 examinations so as to cover periods of more than one year.

25 4. All insurers with regards to medical malpractice insurance as  
26 defined in section 383.150, shall provide to the director, beginning on  
27 June 1, 2008, and not less than annually thereafter, an accurate report  
28 as to the actual rates, including assessments levied against members,  
29 charged by such company for such insurance, for each of the risk  
30 reporting categories established under this section.

383.107. Not later than December 31, 2009, and at least annually  
2 thereafter, the director shall, utilizing the information provided  
3 pursuant to section 383.106, establish and publish a market rate  
4 reflecting the median of the actual rates charged for each of the risk  
5 reporting categories for the preceding year by all insurers with at least

6 a three percent market share of the medical malpractice insurance  
7 market as of December thirty-first of the prior year, which are certified  
8 to have rates which are not inadequate by an actuary selected and  
9 approved by the director.

383.108. The director shall, utilizing the information provided  
2 under section 383.106, publish comparisons of the base rates charged  
3 by each insurer actively writing medical malpractice insurance.

383.124. 1. If the director determines that a person has engaged,  
2 is engaging, or is about to engage in a violation of sections 383.100 to  
3 383.125 or a rule adopted or order issued pursuant thereto, or that a  
4 person has materially aided, is materially aiding, or is about to  
5 materially aid an act, practice, omission, or course of business  
6 constituting a violation of sections 383.100 to 383.125 or a rule adopted  
7 or order issued pursuant thereto, the director may issue such  
8 administrative orders as authorized under section 374.046, RSMo. A  
9 violation of any provisions under these sections is a level two violation  
10 under section 374.049, RSMo. The director of insurance may also  
11 suspend or revoke the license or certificate of authority of any person  
12 for any such willful violation as authorized under section 374.047,  
13 RSMo.

14 2. If the director believes that a person has engaged, is engaging,  
15 or is about to engage in a violation of sections 383.100 to 383.125 or a  
16 rule adopted or order issued pursuant thereto, or that a person has  
17 materially aided, is materially aiding, or is about to materially aid an  
18 act, practice, omission, or course of business constituting a violation of  
19 sections 383.100 to 383.125 or a rule adopted or order issued pursuant  
20 thereto, the director may maintain a civil action for relief authorized  
21 under section 374.048, RSMo. A violation of any provision under these  
22 sections is a level two violation under section 374.049, RSMo.

383.196. As used in sections 383.196 to 383.199, "insurer" includes  
2 any insurance company, mutual insurance company, medical  
3 malpractice association, any entity created under this chapter, or other  
4 entity providing any insurance to any health care provider, as defined  
5 in section 538.205, RSMo, practicing in the state of Missouri, against  
6 claims for malpractice or professional negligence; provided, however,  
7 that the term "insurer" or "insurers" shall not mean any surplus lines  
8 insurer operating under chapter 384, RSMo, or any entity to the extent



9 it is self-insuring its exposure to medical malpractice liability.

383.197. 1. Every insurer shall file with the director all rates and  
2 supplementary rate information which is to be used in this state. Such  
3 rates and supplementary rate information shall be filed before use.

4 2. Rates filed pursuant to this section shall be filed in such form  
5 and manner as prescribed by the director. Whenever a filing is not  
6 accompanied by such information as the director has required under  
7 this section, the director shall so inform the insurer within thirty days.

8 3. All rates and supplementary rate information shall, as soon as  
9 filed, be open to public inspection at any reasonable time. Copies may  
10 be obtained by any person on request and upon payment of a  
11 reasonable charge.

383.198. 1. Notwithstanding the provisions of sections 383.037  
2 and 383.160, no insurer shall issue or sell in the state of Missouri a  
3 policy insuring a health care provider, as defined in section 538.205,  
4 RSMo, for damages for personal injury or death arising out of the  
5 rendering of or failure to render health care services if the director  
6 finds, based upon competent and compelling evidence, that the base  
7 rates of such insurer are excessive, inadequate, or unfairly  
8 discriminatory. A rate may be used by an insurer immediately after it  
9 has been filed with the director, until or unless the director has  
10 determined under this section that a rate is excessive, inadequate, or  
11 unfairly discriminatory.

12 2. In making a determination under subsection 1 of this section,  
13 the director of the department of insurance may use the following  
14 factors:

15 (1) Rates shall not be excessive or inadequate, nor shall they be  
16 unfairly discriminatory;

17 (2) No rate shall be held to be excessive unless such rate is  
18 unreasonably high for the insurance provided with respect to the  
19 classification to which such rate is applicable;

20 (3) No rate shall be held to be inadequate unless such rate is  
21 unreasonably low for the insurance provided with respect to the  
22 classification to which such rate is applicable;

23 (4) To the extent Missouri loss experience is available, rates and  
24 projected losses shall be based on Missouri loss experience and not the  
25 insurance company's or the insurance industry's loss experiences in

26 states other than Missouri unless the failure to do so jeopardizes the  
27 financial stability of the insurer; provided however, that loss  
28 experiences relating to the specific proposed insured occurring outside  
29 the state of Missouri may be considered in allowing a surcharge to such  
30 insured's premium rate;

31 (5) Investment income or investment losses of the insurance  
32 company for the ten-year period prior to the request for rate approval  
33 may be considered in reviewing rates. Investment income or  
34 investment losses for a period of less than ten years shall not be  
35 considered in reviewing rates. Industry-wide investment income or  
36 investment losses for the ten-year period prior to the request for rate  
37 approval may be considered for any insurance company that has not  
38 been authorized to issue insurance for more than ten years;

39 (6) The locale in which the health care practice is occurring;

40 (7) Inflation;

41 (8) Reasonable administrative costs of the insurer;

42 (9) Reasonable costs of defense of claims against Missouri health  
43 care providers;

44 (10) A reasonable rate of return on investment for the owners or  
45 shareholders of the insurer when compared to other similar  
46 investments at the time of the rate request; except that, such factor  
47 shall not be used to offset losses in other states or in activities of the  
48 insurer other than the sale of policies of insurance to Missouri health  
49 care providers; and

50 (11) Any other reasonable factors may be considered in the  
51 disapproval of the rate request.

52 3. The director's determination under subsection 1 of this section  
53 of whether a base rate is excessive, inadequate, or unfairly  
54 discriminatory may be based on any subcategory or subspecialty of the  
55 health care industry that the director determines to be reasonable.

56 4. If actuarially supported and included in a filed rate, rating  
57 plan, rule, manual, or rating system, an insurer may charge an  
58 additional premium or grant a discount rate to any health care  
59 provider based on criteria as it relates to a specified insured health  
60 care provider or other specific health care providers within the specific  
61 insured's employ or business entity. Such criteria may include:

62 (1) Loss experiences;

- 63           (2) Training and experience;  
64           (3) Number of employees of the insured entity;  
65           (4) Availability of equipment, capital, or hospital privileges;  
66           (5) Loss prevention measures taken by the insured;  
67           (6) The number and extent of claims not resulting in losses;  
68           (7) The specialty or subspecialty of the health care provider;  
69           (8) Access to equipment and hospital privileges; and  
70           (9) Any other reasonable criteria identified by the insurer and  
71 filed with the department of insurance.

72           5. Supporting actuarial data shall be filed in support of a rate,  
73 rating plan, or rating system filing, when requested by the director to  
74 determine whether rates should be disapproved as excessive,  
75 inadequate, or unfairly discriminatory, whether or not the insurer has  
76 begun using the rate.

77           6. The director of the department of insurance shall promulgate  
78 rules for the administration and enforcement of this section. Any rule  
79 or portion of a rule, as that term is defined in section 536.010, RSMo,  
80 that is created under the authority delegated in this section shall  
81 become effective only if it complies with and is subject to all of the  
82 provisions of chapter 536, RSMo, and, if applicable, section 536.028,  
83 RSMo. This section and chapter 536, RSMo, are nonseverable and if any  
84 of the powers vested with the general assembly pursuant to chapter  
85 536, RSMo, to review, to delay the effective date, or to disapprove and  
86 annul a rule are subsequently held unconstitutional, then the grant of  
87 rulemaking authority and any rule proposed or adopted after August  
88 28, 2006, shall be invalid and void.

          383.199. Notwithstanding any other provision of law, no insurer  
2 shall, with regards to medical malpractice insurance, as defined in  
3 section 383.150, implement any rate increase of more than fifteen  
4 percent without first providing clear and conspicuous written notice  
5 by United States mail to the insured at least sixty days prior to  
6 implementation of the rate increase, unless the increase is due to the  
7 request of the insured or due to a material change in the nature of the  
8 insured's health care practice or individuals risk characteristics.

          383.450. 1. As used in this section, "insurer" includes every  
2 insurance company authorized to transact business in this state, every  
3 unauthorized insurance company transacting business pursuant to

4 chapter 384, RSMo, every risk retention group, every insurance  
5 company issuing policies or providing benefits to or through a  
6 purchasing group, and any other person providing medical malpractice  
7 insurance coverage in this state.

8 2. Notwithstanding any other provision of law, no insurer shall,  
9 with regards to medical malpractice insurance, as defined in section  
10 383.150:

11 (1) Fail or refuse to renew the insurance without first providing  
12 written notice by certified United States mail to the insured at least  
13 sixty days prior to the effective date of such actions, unless such failure  
14 or refusal to renew is based upon a failure to pay sums due or a  
15 termination or suspension of the health care provider's license to  
16 practice medicine in the state of Missouri, termination of the insurer's  
17 reinsurance program, or a material change in the nature of the  
18 insured's health care practice; or

19 (2) Cease the issuance of such policies of insurance in the state  
20 of Missouri without first providing written notice by certified United  
21 States mail to the insured and to the Missouri department of insurance  
22 at least one hundred eighty days prior to the effective date of such  
23 actions.

24 3. Any insurer that fails to provide the notice required under  
25 subdivision (1) of subsection 2 of this section shall, at the option of the  
26 insured, continue the coverage in accordance with the provisions of  
27 subdivision (2) of subsection 6 of section 379.321, RSMo.

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